

**LABORERS' PENSION FUND and
LABORERS' WELFARE FUND OF THE
HEALTH AND WELFARE DEPARTMENT
OF THE CONSTRUCTION AND GENERAL
LABORERS' DISTRICT COUNCIL OF
CHICAGO AND VICINITY, and JAMES S.
JORGENSEN, Administrator of the Funds, and
CONSTRUCTION & GENERAL LABORERS'
DISTRICT COUNCIL OF CHICAGO &
VICINITY,**

V.

M4 CONCRETE, INC.,

Defendant.

1. On November 26, 2014, Plaintiffs filed a complaint under Section 301(a), Labor Management Relations Act, 29 U.S.C. §185(a), as amended, and Section 502(a)(3) of the Employee Retirement Income Security Act, 29 U.S.C. §1132(a)(3), as amended, alleging that the Company failed to produce books and records for an audit for the period from January 1, 2013 to the present. On July 16, 2015, the Plaintiffs amended the Complaint adding the Construction and General Laborers' District Council of Chicago & Vicinity ("Union"), as a Plaintiff and alleging that

contributions, wages and Union dues are owed to the Funds and the Union based on an audit report covering the period from January 1, 2013, through September 30, 2014, and based on a grievance award.

2. On February 10, 2015, this Court entered default against the Defendant M4 Concrete, Inc., The Amended Complaint was filed and forwarded to the Registered Agent of M 4 Concrete, Inc., Thomas R. Palmer on July 16, 2015, via U.S. Mail to the office of the Registered Agent at 1515 E. Woodfield Road, Suite 250, Schaumburg, Illinois 60173. (Dk # 19, Exh. A).

3. More than twenty days have passed since service of the summons and complaint. A copy of this motion will be sent to Registered Agent, Thomas R. Palmer, at 1515 E. Woodfield Road, Suite 250, Schaumburg, Illinois 60173. (Dk# 19, Exhibit A).

4. Plaintiffs directed the Calibre CPA Group to perform an audit covering the period from January 1, 2013 though September 30, 2014. As shown by the Affidavit of James Fosco, during that period, the Company's records reflected that the amount of \$29,161.62 was owed to the Funds in principal contributions, including Welfare, Pension, Training Fund contributions, LDCLMCC, CCA and LECET Fund contributions and Union dues. (Exhibit B, attachment 1).

5. Per the Collective Bargaining Agreement ("Agreement"), Trust Agreements and policies and procedures of the Trustees, liquidated damages are owed in the amount of twenty percent of the delinquency for the Welfare, Pension and Training Funds or the amount of \$5,479.57 to the Funds (Exhibit A). The Fund also collect penalties in the amount of ten percent for the LDCLMCC, CCA and LECET Funds and for Union dues, and the amount of \$176.38 is due in penalties for late payments to those Funds. In addition, past due penalties are \$1,116.51, for contributions received but paid untimely. (Exhibit B, J. Fosco Affidavit).

6. The Funds were required to pay \$800.00 for Calibre to conduct the audit review and the amount of \$6,914.44, is due in interest on principal contributions at the Funds' rate of 12 % per annum. (Exhibit B, J. Fosco Affidavit ¶¶ 5, 6).

7. The Union received an audit report from Calibre CPA Group that Union members were not paid wages in the amount of \$13,249.94 consistent with the rates established by the Agreement between the Company and the Union. (Exhibit C, M. Flanagan Affidavit). Under the grievance procedure, on May 15, 2015, the Union filed a grievance. On June 16, 2015, the Union sent notice to the officer of M4 Concrete, Inc., manager, Jamie Ackert, at the last known address and to the email address of Jamie Ackert. This notice provided that a hearing of the grievance which was attached to the notice would be held on July 6, 2015, at the Union's office, in Burr Ridge, Illinois. (See, Affidavit M. Flanagan, Exh. C, D).

8. On July 6, 2015, the Union convened a hearing where upon a decision of the Joint Committee upheld the grievance. Their decision is attached hereto as Exhibit E. It provides that the employer shall pay the wages of \$13,249.94 to the Employees identified by the wage audit withholding applicable taxes. The decision also provides that a penalty of 50% in liquidated damages or the amount of \$6,624.97, shall be remitted to the Laborers' District Council Charitable Foundation as liquidated damages. Damages are authorized by the Joint Agreement Article XI, paragraph 5. The Charitable Foundation is designated to accept those amounts per the Union's policies. (Exhibit E). Audit costs expended by the Union have been included in the grievance award in the amount of \$332.50.

9. Plaintiffs request that the judgment include reasonable attorneys' fees incurred from through the present. As provided in an Affidavit from Karen I. Engelhardt on behalf of both

Plaintiffs, attorneys' fees for the period from November 24, 2014 through August 5, 2015 are \$4,619.50 and costs expended were \$470.00 (Exhibit E). For the Funds' attorneys' fees are authorized by ERISA, 29 U.S.C. § 1132(g)(2), the Agreement and Trust Agreements. Attorneys' fees are authorized on behalf of the Union under the Agreement, Art. XVIII, paragraph 5.

Wherefore, plaintiffs drafted a proposed judgment order for a total judgment against M4 Concrete, Inc., in the amount of \$62,030.99.

Respectfully submitted,

/s/KarenI. Engelhardt
One of plaintiffs' attorneys

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